

AMENDED IN ASSEMBLY MAY 22, 2003
AMENDED IN ASSEMBLY MAY 14, 2003
AMENDED IN SENATE APRIL 24, 2003
AMENDED IN SENATE APRIL 21, 2003
AMENDED IN SENATE APRIL 7, 2003

SENATE BILL

No. 39

Introduced by Senator Perata
(Principal coauthor: Assembly Member Chan)

January 3, 2003

An act relating to the Oakland Unified School District, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 39, as amended, Perata. Oakland Unified School District: emergency loan.

(1) Existing law provides for emergency apportionments to school districts subject to specified conditions including, in certain circumstances, the repayment of an emergency loan over a period of no more than 10 years and the appointment by the Superintendent of Public Instruction of an administrator who would exercise the powers and responsibilities of the governing board of the school district.

This bill would require the Superintendent of Public Instruction to assume all the rights, duties, and powers of the governing board of the Oakland Unified School District and to appoint an administrator to act on behalf of the Superintendent of Public Instruction in exercising the

superintendent's authority over the school district. The bill would authorize the administrator, with the approval of the superintendent, to enter into agreements on behalf of the school district and to change any existing district rules, policies, or practices, as provided. The bill would require the administrator to be added by the district as an employee for certain insurance purposes. *The bill would, in addition, specify that the administrator is a public school employer within the meaning of the Educational Employment Relations Act.*

The bill would specify that the governing board of the school district is not to receive any compensation during the period of the superintendent's authority over the district. The bill would authorize the administrator to terminate the employment of certain district personnel, as provided.

The bill would continue the authority of the superintendent and the administrator over the school district until certain enumerated conditions are met, including the completion of an improvement plan for the school district.

The bill would require the administrator to consider, on a monthly basis, or more frequently if desired, information from one or more specified groups. The bill would require the County Office Fiscal Crisis and Management Assistance Team (FCMAT) to prepare an improvement plan for the school district, as provided, by July 1, 2003, and would require the FCMAT to report on the implementation of the plan, as specified.

This bill would appropriate \$100,000,000 from the General Fund to the Superintendent of Public Instruction for the purpose of providing the Oakland Unified School District with an emergency loan. The bill would authorize loan funds to be disbursed from the proceeds of the loan only if the trustee and FCMAT jointly determine that disbursement is necessary. The bill would require the district to repay the loan as a straight line loan amortized over a 20-year term, with interest as provided. The bill would authorize the district from June 1, 2003, to June 30, 2005, inclusive, to sell, ~~sell back, lease, or leaseback certain surplus~~ property of the district, ~~as provided~~, and use the proceeds from that transaction to reduce or retire the emergency loan. *The bill would, in addition, make the school district ineligible for hardship state funding for the construction of school facilities during that time.*

The bill would require the school district, except as specified, to bear 100% of all costs associated with implementing its provisions, thereby imposing a state-mandated local program.



(2) This bill would declare that due to the unique circumstances relating to the Oakland Unified School District's fiscal emergency, a general statute cannot be made applicable.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason and would provide that with regard to any other mandates, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Providing a quality education that meets the unique needs
4 of Oakland public school pupils is a fundamental goal that should
5 not be jeopardized.

6 (b) In late August 2002, the Oakland Unified School District
7 became aware of a negative general fund balance for the 2001–02
8 fiscal year, and of potential deficits in its 2002–03 budget, and
9 thereafter, promptly reported this information to the Alameda
10 County Office of Education.

11 (c) The Oakland Unified School District is projected to run out
12 of cash in May of 2003 and will be unable to pay school employees
13 unless immediate action is taken.

14 (d) Despite initial budget cuts for the 2002–03 fiscal year
15 exceeding fourteen million dollars (\$14,000,000) and additional
16 budget cuts and adjustments of seventeen million dollars
17 (\$17,000,000), the Oakland Unified School District will have a
18 negative fund balance at the close of the current fiscal year and
19 requires a loan from the State of California.

(e) While in need of a loan from the State of California, there have not been any accusations of intentional mismanagement or fraud in the Oakland Unified School District.

(f) The Oakland Unified School District has made demonstrable academic improvements over the last few years, witnessed by test score improvements, more fully credentialed teachers in Oakland classrooms, and increased parental and community involvement.

(g) The community of the Oakland Unified School District has the will to continue the key educational reforms that have benefited Oakland public school pupils in the last three years and to support difficult decisions in order to immediately eliminate all further overspending by the district.

SEC. 2. (a) It is the intent of the Legislature that the state administrator appointed pursuant to this act should work with the present administrators and governing board of the Oakland Unified School District to identify the procedures and programs currently implemented by the district that have proven to do one or more of the following:

(1) Significantly raise pupil achievement.

(2) Improve pupil attendance.

(3) Lower pupil dropout rate.

(4) Increase parental involvement.

(5) Attract, retain, and train a quality teaching staff.

(b) It is the intent of the Legislature that these identified procedures and programs should be protected, maintained, and expanded as the district's budget allows.

SEC. 3. The Legislature finds and declares that because of the fiscal emergency in which the Oakland Unified School District finds itself and in recognition of the March 27, 2003 request of the governing board of the district for a loan from the state, it is necessary that the Superintendent of Public Instruction assume control of the district in order to ensure the return to the district of fiscal solvency.

SEC. 4. (a) The Superintendent of Public Instruction shall immediately assume all of the rights, duties, and powers of the governing board of the Oakland Unified School District.

(b) The Superintendent of Public Instruction, in consultation with the Alameda County Superintendent of Schools, shall appoint an administrator to act on behalf of the Superintendent of

1 Public Instruction in exercising the authority described in this act.
 2 The Superintendent of Public Instruction or the state-appointed
 3 administrator may, on a short-term basis, employ at district
 4 expense any staff necessary to assist the administrator, including,
 5 but not limited to, a certified public accountant. The administrator
 6 shall have recognized expertise in management and finance. The
 7 administrator shall serve under the direction and supervision of the
 8 Superintendent of Public Instruction until terminated by the
 9 Superintendent of Public Instruction at his or her discretion. The
 10 Superintendent of Public Instruction shall consult with the
 11 Alameda County Superintendent of Schools prior to terminating
 12 the administrator. The Superintendent of Public Instruction,
 13 operating through the administrator, may do all of the following:

14 (1) Implement substantial changes in the fiscal policies and
 15 practices of the Oakland Unified School District, including, if
 16 necessary, the filing of a petition under Chapter 9 of the federal
 17 Bankruptcy Act (11 U.S.C. Sec. 901 et seq.) for the adjustment of
 18 indebtedness of the district.

19 (2) Revise the educational program of the Oakland Unified
 20 School District to reflect realistic income projections, in response
 21 to the dramatic effect of the changes in fiscal policies and practices
 22 upon educational program quality and the potential for the success
 23 of all pupils. To the extent allowed by district finances, it is the
 24 intent of the Legislature that the revised program shall maintain the
 25 core educational reforms that have led to districtwide
 26 improvement of academic achievement, including, but not limited
 27 to, educational reforms targeting underperforming schools, new
 28 small schools, and other reforms that have demonstrated
 29 measurable success.

30 (3) Encourage all members of the school community to accept
 31 a fair share of the burden of the fiscal recovery of the Oakland
 32 Unified School District.

33 (4) Consult, for the purposes described in this act, with the
 34 governing board of the Oakland Unified School District, the
 35 exclusive representatives of the employees of the district, parents,
 36 and the community.

37 SEC. 5. (a) (1) To facilitate the appointment of the
 38 *state-appointed* administrator and the employment of any
 39 necessary staff, for the purposes of this act, the Superintendent of
 40 Public Instruction is exempt from the requirements of Article 6

1 (commencing with Section 999) of Chapter 6 of Division 4 of the
2 Military and Veterans Code and Part 2 (commencing with Section
3 10100) of the Public Contract Code.

4 (2) The salary and benefits of the ~~state-appointed~~ administrator
5 shall be established by the Superintendent of Public Instruction
6 and paid by the Oakland Unified School District.

7 (3) During the tenure of his or her appointment, the
8 administrator, if otherwise an employee of the state or of the
9 county superintendent, is an employee of the school district, but
10 shall remain in the same retirement system under the same plan
11 that has been provided by his or her employment with the state or
12 the office of the county superintendent. Upon the expiration or
13 termination of the appointment, the administrator shall have the
14 right to return to his or her former position, or to a position at
15 substantially the same level as that position, if that former position
16 was with the state or the office of the county superintendent. The
17 time served in the appointment shall be counted for all purposes
18 as if the administrator had served that time in his or her former
19 position with the state or with the office of the county
20 superintendent.

21 (b) For the period of time during which the Superintendent of
22 Public Instruction exercises the authority described in subdivision
23 (a) of Section 4, the governing board of the Oakland Unified
24 School District shall serve as an advisory body reporting to the
25 administrator, but has no rights, duties, or powers, and is not
26 entitled to any stipend, benefits, or other compensation from the
27 district.

28 (c) Notwithstanding any other provision of law, the
29 administrator may, after according the employee reasonable notice
30 and opportunity for hearing, terminate the employment of any
31 district superintendent of schools, or deputy, associate, or assistant
32 superintendent of schools, or other person employed in an
33 equivalent capacity, whose duties include overseeing, managing,
34 or otherwise directing the fiscal and budgetary operations of the
35 Oakland Unified School District, and who is employed by the
36 Oakland Unified School District under a contract of employment
37 renewed after the effective date of this act if the employee fails to
38 document, to the satisfaction of the administrator, that before the
39 effective date of this act he or she either advised the governing
40 board of the district, or his or her superior, that actions



1 contemplated or taken by the governing board could result in the
2 fiscal insolvency of the district, or took other appropriate action to
3 avert that fiscal insolvency.

4 (d) With the approval of the Superintendent of Public
5 Instruction, the administrator may enter into agreements on behalf
6 of the school district and, subject to any contractual and statutory
7 obligation of the school district, ~~including the obligation to meet~~
8 ~~and confer in good faith with the exclusive bargaining~~
9 ~~representative of affected employees of the district,~~ change any
10 existing school district rules, regulations, policies, or practices as
11 necessary for the effective implementation of the improvement
12 plan specified in Section 7 of this act.

13 (e) The authority of the Superintendent of Public Instruction
14 and the administrator pursuant to this act shall continue until all of
15 the following conditions occur:

16 (1) Two complete fiscal years have elapsed following the
17 appointment of the administrator or, at any time after one complete
18 fiscal year has elapsed following that appointment, if the
19 administrator determines, and so notifies the Superintendent of
20 Public Instruction, that future compliance by the Oakland Unified
21 School District with the improvement plan specified in Section 7
22 of this act is probable.

23 (2) The County Office Fiscal Crisis and Management
24 Assistance Team (FCMAT) completes the improvement plan
25 specified in Section 7 of this act.

26 (3) FCMAT, after consultation with the administrator,
27 determines that for at least the immediately previous six months
28 the school district made substantial and sustained progress in
29 implementation of the plans in the major functional area.

30 (4) The administrator certifies that all necessary collective
31 bargaining agreements have been negotiated and ratified, and that
32 the agreements are consistent with the terms of the improvement
33 plan specified in Section 7 of this act.

34 (5) The district completes all reports required by the
35 Superintendent of Public Instruction and the administrator.

36 (6) The Superintendent of Public Instruction concurs with the
37 assessment of the administrator and FCMAT that future
38 compliance by the Oakland Unified School District with the
39 improvement plan described in Section 7 of this act and the
40 multiyear financial recovery plan described in paragraph (2) of

1 subdivision (a) of Section 41327 of the Education Code is
2 probable.

3 (f) If all of the conditions specified in subdivision (e) occur, the
4 governing board of the Oakland Unified School District shall
5 regain all of its rights, duties, and powers.

6 (g) Notwithstanding subdivision (f), if the Oakland Unified
7 School District violates any provision of the improvement plan
8 specified in Section 7 of this act, after the governing board of the
9 school district regains all of its rights, duties, and powers pursuant
10 to subdivision (f), the Superintendent of Public Instruction may
11 reassume, in accordance with this section, all of the rights, duties,
12 and powers of the governing board of the school district. The
13 Superintendent of Public Instruction shall subsequently return to
14 the governing board of the school district all of its rights, duties,
15 and powers reassumed under this subdivision if he or she
16 determines that the conditions of subdivision (e) are satisfied.

17 (h) *For the purposes of Article 2 (commencing with Section*
18 *41320) and Article 2.5 (commencing with Section 41325 of*
19 *Chapter 3 of Part 24 of the Education Code, the administrator is*
20 *a public school employer within the meaning of the Educational*
21 *Employment Relations Act (Chapter 10.7 (commencing with*
22 *Section 3540) of Division 4 of Title 1 of the Government Code).*

23 SEC. 6. The administrator shall consider, on a monthly basis,
24 or more frequently if so desired by the administrator, information
25 from one or more groups from each of the following categories:

26 (a) The governing board of the school district.

27 (b) Any advisory council of the school district.

28 (c) Any parent-teacher organization of the school district.

29 (d) Representatives from the community in which the school
30 district is located.

31 (e) The County Office Fiscal Crisis and Management
32 Assistance Team.

33 (f) The Superintendent of Public Instruction.

34 SEC. 7. (a) On or before July 1, 2003, the County Office
35 Fiscal Crisis and Management Assistance Team (FCMAT) shall
36 prepare an improvement plan for the Oakland Unified School
37 District by updating the January 2000 comprehensive assessments
38 and recovery plans of the Oakland Unified School District.

39 (b) Based upon progress reports prepared pursuant to
40 subdivision (c), FCMAT shall recommend to the Superintendent

of Public Instruction those designated functional areas of school district operation that it determines are appropriate for the governing board of the school district to assume.

(c) Commencing 30 days following the effective date of this act and in September 2003, and each six months thereafter until September 2004, FCMAT shall file a written status report with the appropriate fiscal and policy committees of the Legislature, including any special committees created for the purpose of reviewing the reports, and with the Members of the Legislature who represent the Oakland Unified School District, the advisory board of the school district, the Superintendent of Public Instruction, the Director of Finance, and the Secretary for Education. The reports shall include the progress that the Oakland Unified School District is making in meeting the recommendations of the improvement plan developed pursuant to this section.

SEC. 8. (a) The Oakland Unified School District shall bear 100 percent of all costs associated with implementing this act, except for the activities of the County Office Fiscal Crisis and Management Team progress reports specified in Section 7 of this act.

(b) The Oakland Unified School District shall add the administrator as a covered employee of the school district for all purposes of errors and omissions liability insurance policies.

SEC. 9. (a) The sum of one hundred million dollars (\$100,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for apportionment to the Oakland Unified School District for the purpose of an emergency loan. In order to qualify for the loan, the district shall comply with Article 2 (commencing with Section 41320) and Article 2.5 (commencing with Section 41325) of Chapter 3 of Part 24 of the Education Code to the extent those provisions are consistent with the conditions specified in this act.

(b) Funds may be disbursed from the proceeds of the loan only if the ~~trustee~~ administrator and the County Office Fiscal Crisis and Management Assistance Team jointly determine that the disbursement is necessary.

(c) Based on the needs of the district to meet its obligations, the Superintendent of Public Instruction may direct the Controller to disburse, on a monthly basis, specific amounts of the emergency

1 loan before the approval of all of the conditions established by this
2 act.

3 (d) For the fiscal year in which the loan moneys are disbursed
4 and each fiscal year thereafter, the Controller, or his or her
5 designee, shall cause an audit to be conducted of the books and
6 accounts of the district, instead of the audit required by Section
7 41020 of the Education Code. At the discretion of the Controller,
8 the audit may be conducted by the Controller, his or her designee,
9 or an auditor selected by the county superintendent and approved
10 by the Controller. The costs of the audit shall be paid by the district.
11 The audits shall be performed until the Superintendent of Public
12 Instruction, in consultation with the Controller, determines that the
13 district is financially solvent, but may not cease being performed
14 earlier than one year following the implementation of the plan
15 required by Section 7 nor later than the time the emergency loan,
16 including interest, is repaid. In addition, the Controller shall
17 conduct quality control reviews pursuant to subdivision (c) of
18 Section 14504.2 of the Education Code.

19 SEC. 10. (a) Notwithstanding subparagraph (A) of
20 paragraph (2) of subdivision (a) of Section 41327 of the Education
21 Code, the Oakland Unified School District shall repay the
22 emergency loan incurred pursuant to Section 9 of this act as a
23 straight line loan amortized over a 20-year term. This amount shall
24 be repaid by the district, plus interest calculated at a rate equal to
25 the rate earned by the Pooled Money Investment Account on the
26 date this act becomes effective, for a period not to exceed 20 years.

27 (b) If a required payment is not made within 60 days after a
28 scheduled date, the Controller shall pay the defaulted loan
29 payment of principal and interest by withholding that amount from
30 the next available payment that would otherwise be made to the
31 county treasurer on behalf of the district pursuant to Section 14041
32 of the Education Code. However, subject to the approval of the
33 Department of Finance, the amount withheld may be in monthly
34 amounts as determined by an agreement between the Oakland
35 Unified School District and the Controller during the period
36 beginning with the next available apportionment through the
37 month preceding the next scheduled payment.

38 (c) The Director of Finance may amend the payment schedule
39 set forth in subdivision (a) if the director concludes that the
40 amendment is warranted and is in the best interests of both the state



1 and the Oakland Unified School District education program. Upon
2 that determination, the director shall notify the Joint Legislative
3 Budget Committee that the payment scheduled will be changed on
4 the date that is 90 days from the date of notification if the
5 Legislature is in session. If the 90-day period ends during a recess
6 of the Legislature or while the Legislature is not in session, the
7 90-day period shall be extended until the Legislature reconvenes.
8 Amendments to the payment schedule shall defer the unpaid
9 portion of a repayment of the earliest fiscal year in which no other
10 repayment is scheduled. Interest shall accrue on the unpaid portion
11 of a repayment from the scheduled due date until the time the
12 payment is actually made. The interest charge shall be the rate
13 equal to the daily investment rate of the Pooled Money Investment
14 Account on the date the pay schedule is changed.

15 (d) The school district may repay its loan obligation without
16 incurring any prepayment penalties.

17 SEC. 11. (a) Notwithstanding Sections 17456, 17457,
18 17462, and 17463 of the Education Code, or any other law, from
19 June 1, 2003, to June 30, 2005, inclusive, the Oakland Unified
20 School District may sell, ~~sell back, lease, or leaseback, surplus~~
21 ~~property owned by the district for at least 40 years, to any~~
22 ~~nonprofit, for profit, or governmental entity, and use the proceeds~~
23 ~~from the sale, sale back, lease, or leaseback to reduce or retire the~~
24 ~~emergency loan provided in Section 9 of this act. The sale or lease~~
25 ~~only of property pursuant to this subdivision is not subject to~~
26 ~~Section 17459 or 17464 of the Education Code.~~

27 ~~(b) This subdivision applies only to surplus property that is~~
28 ~~currently used to house administrative services or used as~~
29 ~~warehouse space.~~

30 *(b) Notwithstanding any other provision of law, from June 1,*
31 *2003, to June 30, 2005, inclusive, the Oakland Unified School*
32 *District is not eligible for financial hardship assistance pursuant*
33 *to Article 8 (commencing with Section 17075.10) of Chapter 12.5*
34 *of Part 10 of the Education Code.*

35 SEC. 12. The Alameda County Superintendent of Schools
36 maintains the responsibility to superintend school districts under
37 its jurisdiction. This act does not remove any statutory or
38 regulatory rights, duties, or obligations from the county
39 superintendent of school.

1 SEC. 13. The Department of Finance is authorized to redirect
2 funds appropriated in Item 6110-107-0001 of Section 2.00 of the
3 Budget Act of 2002 and from the corresponding item and section
4 number of the Budget Act of 2003 for the purposes of funding
5 activities of the County Office Fiscal Crisis and Management
6 Assistance Team specified in this act.

7 SEC. 14. The Legislature finds and declares that due to unique
8 circumstances relating to the fiscal emergency in the Oakland
9 Unified School District, a general statute cannot be made
10 applicable within the meaning of Section 16 of Article IV of the
11 California Constitution.

12 SEC. 15. No reimbursement is required by this act pursuant
13 to Section 6 of Article XIII B of the California Constitution
14 because the only costs that may be incurred by a local agency or
15 school district are the result of a program for which legislative
16 authority was requested by that local agency or school district,
17 within the meaning of Section 17556 of the Government Code and
18 Section 6 of Article XIII B of the California Constitution.

19 SEC. 16. This act is an urgency statute necessary for the
20 immediate preservation of the public peace, health, or safety
21 within the meaning of Article IV of the California Constitution and
22 shall go into immediate effect. The facts constituting the necessity
23 are:

24 In order to address the fiscal emergency in which the Oakland
25 Unified School District finds itself and to ensure that it meets its
26 cash obligations for this fiscal year, it is necessary that this act take
27 effect immediately.

